

1 E. Patrick Ellisen, CA Bar No. 142033  
2 ellisep@gtlaw.com  
3 Daniel T. McCloskey, CA Bar No. 191944  
4 mccloskeyd@gtlaw.com  
5 **GREENBERG TRAURIG LLP**  
1900 University Avenue 5th Floor  
East Palo Alto, CA 94303  
Telephone: (650) 328-8500  
Facsimile: (650) 328-8508

6 Brian A. Carpenter, *pro hac vice*  
7 carpenterb@gtlaw.com  
8 **GREENBERG TRAURIG LLP**  
1200 17th Street, Suite 2400  
Denver, CO 80202  
Telephone: (303) 572-6500  
Facsimile: (303) 572-6540

9  
10 Attorneys for Plaintiff and Counterclaim-Defendant,  
11 **PROTECTIVE OPTICS, INC.**

12 **UNITED STATES DISTRICT COURT**  
13 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
14 **SAN FRANCISCO DIVISION**

15  
16 **PROTECTIVE OPTICS, INC.,**  
a California corporation

17 Plaintiff,

18 v.

19 **PANOPTX INC.,**  
20 a California corporation

21 Defendant.

Case No. C05-02732 CRB

**STIPULATION AND ~~[PROPOSED]~~ ORDER  
MODIFYING SCHEDULE FOR EXPERT  
DISCLOSURES AND REPORTS**

Courtroom: 8, 19<sup>th</sup> Floor  
Before: Hon. Charles R. Breyer

[Trial Date: August 6, 2007]

22  
23 AND RELATED CROSS-ACTION  
24  
25  
26  
27  
28

1 Plaintiff and Counterclaim-Defendant Protective Optics, Inc. (“Protective Optics”) and  
2 Defendant and Counterclaimant Panoptx, Inc. (“Panoptx”), by and through their undersigned counsel,  
3 state and agree as follows:

4 Whereas, the parties have agreed, consistent with Federal Rule of Civil Procedure 26(a), that  
5 with respect to those issues on which the party has the burden of proof, expert disclosures and reports  
6 are due on May 8, 2007, responsive reports are due on June 7, 2007, and the parties shall  
7 simultaneously exchange rebuttal reports on June 21, 2007;

8 Whereas, Protective Optics has retained Kenneth Frederick as an industry expert for the  
9 purpose of rendering opinions relating to trade secret misappropriation, willful infringement,  
10 secondary considerations of non-obviousness and market definition in this action;

11 Whereas, on April 4, 2007, Protective Optics disclosed Mr. Frederick to Panoptx’s counsel  
12 under the terms of the Stipulated Protective Order, providing Panoptx with Mr. Frederick’s  
13 curriculum vitae and information about his professional experience and affiliations;

14 Whereas, on or about April 24, counsel for Protective Optics was advised by Mr. Frederick’s  
15 wife that Mr. Frederick was seriously ill, and had been hospitalized in “poor condition” with an  
16 undetermined condition and prognosis;

17 Whereas, on April 30, counsel for Protective Optics called Mrs. Frederick to obtain an update  
18 on Mr. Frederick’s condition to determine whether he would be capable of serving as an expert in this  
19 matter, and left a message for her that was not returned that day;

20 Whereas, on May 1, counsel for Protective Optics called Mrs. Frederick again and reached her  
21 at which time she explained that Mr. Frederick had contracted chicken pox and that it had spread to  
22 his lungs and throat, that while he had been released from the hospital the previous evening, he had  
23 difficulty speaking, was confined to the home, and was and would be taking “heavy” pain medication  
24 for at least several weeks;

25 Whereas, Mrs. Frederick estimated that Mr. Frederick would likely not be in a position to  
26 return to work on this matter for at least 30 days;

1       Whereas, based on the foregoing information, counsel for Protective Optics determined that  
2 Mr. Frederick would not be in a position to render opinions and prepare a report in time for the May 8  
3 or June 7 deadlines, and might not be able to serve as an expert at all, given the state of his health;

4       Whereas, on May 2, counsel for Protective Optics contacted counsel for Panoptx via e-mail to  
5 inform them of Mr. Frederick's condition, and to propose that the parties agree to a limited extension  
6 of the time to serve Mr. Frederick's expert report to allow him sufficient time to recover or to allow  
7 Protective Optics sufficient time to retain an alternative expert, and suggested that counsel discuss the  
8 matter the following day;

9       Whereas, on May 3, counsel for Protective Optics spoke with counsel for Panoptx and  
10 explained the foregoing circumstances, and proposed that the parties agree to a 30 day extension for  
11 Mr. Frederick or his replacement to produce a report, and that Panoptx would have 30 days to  
12 respond to the opinions stated in the report;

13       Whereas, on May 4, counsel for the parties agreed that, apart from the general expert  
14 disclosure scheduled to which they had agreed, Protective Optics will have to and including June 7,  
15 2007, to disclose an industry expert and to serve a corresponding report on the issues stated herein on  
16 which Mr. Frederick would have rendered opinions;

17       Whereas, counsel for the parties further agreed that Panoptx will have forty-five (45) days  
18 from June 7, 2007 (until July 22) to disclose a corresponding industry expert and serve a report in  
19 rebuttal to the opinions offered by Protective Optics' industry expert;

20       NOW THEREFORE, IT IS HEREBY STIPULATED by and between the Parties, subject to  
21 Court approval, that:

- 22       1.       Protective Optics will have to and including June 7, 2007, to disclose an industry  
23 expert and to serve a corresponding report relating to trade secret misappropriation, willful  
24 infringement, secondary considerations of non-obviousness and market definition in this action; and
  - 25       2.       Panoptx will have forty-five (45) days from June 7, 2007 (until July 22) to disclose a  
26 corresponding industry expert and serve a report in rebuttal to the opinions offered by Protective  
27 Optics' industry expert.
- 28

1 DATED: May 8, 2007

GREENBERG TRAURIG, LLP

3 By: /s/ Daniel T. McCloskey  
4 Daniel T. McCloskey

5 Attorneys for Plaintiff and Counterclaim-  
6 Defendant,  
7 **PROTECTIVE OPTICS, INC.**

8 DATED: May 8, 2007

KRIEG, KELLER, SLOAN, REILLEY & ROMAN, LLP

10 By: /s/ Kenneth E. Keller  
11 Kenneth E. Keller

12 Attorneys for Defendant and Counterclaimant,  
13 **PANOPTX, INC.**

14 I, Daniel T. McCloskey, am the ECF User whose ID and password are being used to file this  
15 Stipulation And [Proposed] Order Modifying Schedule for Expert Disclosures and Reports. In  
16 compliance with General Order 45, X.B., I hereby attest that Kenneth Keller has concurred in this  
17 filing.

19 Dated: May 8, 2007

By: /s/ Daniel T. McCloskey  
20 Daniel T. McCloskey

21 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

23 Dated: May 9, 2007

24 HON. CHARLES R. BREYER  
25 UNITED STATES DISTRICT COURT

